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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

IMRAN ALRAI

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1:18-cr-192-JL

November 19, 2021

2:34 p.m.

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TRANSCRIPT OF MOTION HEARING
HELD VIA VIDEOCONFERENCE
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

For the Government: Matthew Hunter, AUSA
John S. Davis, AUSA
Cam T. Le, AUSA
United States Attorney's Office

For the Defendant: Donna J. Brown, Esq.
Michael Gregory Eaton, Esq.
Wadleigh Starr & Peters, PLLC

For the United Way: John J. Commisso, Esq.
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Official Court Reporter
United States District Court
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1 P R O C E E D I N G S

2 THE CLERK: Court is now in session and has before
3 it for consideration a motion hearing in criminal case
4 18-cr-192-01-JL, United States vs. Alrai.

5 THE COURT: All right. Good afternoon, everybody.

6 I want to talk a little bit about the motion to
7 withdraw, which I want to say from the outset, because I don't
8 want to give anybody the misimpression, I view this motion as
9 filed in good faith on legitimate grounds and I don't -- I
10 don't want to give the impression for a moment that -- that I'm
11 critical of this motion in any way.

12 That said, I want -- I do want to lay my cards on
13 the table, especially with Attorney Brown and Attorney Eaton,
14 that I -- I do want to explore the possibility today of keeping
15 you in the case, not so much from denying your motion, but
16 wondering if there are circumstances under which you might
17 withdraw it. Okay? So I have some questions that I'd like to
18 ask.

19 In preparation to do that, I spent some time with
20 the motion again today and the attachments and really read it
21 carefully. And I'll admit a couple of things emerged to me
22 that -- a couple things emerged for me that I probably didn't
23 focus on as much the first time through and even when I
24 scheduled the hearing. So while I have a number of questions,
25 I think today's review makes me want to front-load a couple of

1 them and put them right up front because they may be
2 dispositive.

3 You know, I looked at the -- the introductory line
4 of the motion says that the motion is filed due to COVID-19
5 pandemic-related scheduling conflicts creating the risk of
6 ineffective assistance, and that's very straightforward; and
7 failure to pay fees and expenses creating potential conflict of
8 interest. And that's a little bit different and there was some
9 nuance there that I didn't focus on, I think, enough the first
10 time I read through it and scheduled the hearing, so let me
11 talk a little bit about that.

12 I do want to say, Attorney Brown, that on the first
13 issue, in terms of scheduling, I -- when I denied the motion to
14 extend some deadlines, I really wasn't aware of all those
15 pressures that you had in state court. And I think I should be
16 flexible about addressing some of those issues if we can get to
17 a place where your continued involvement is possible. So, that
18 said, let me move on to other issues.

19 I'm looking at page five of the motion, on page five
20 if anybody has it. And there, Counsel, you made the point --
21 you made the point that you seek to withdraw regardless of
22 Mr. Alrai's eligibility for representation under the CJA and
23 that it's appropriate for the Court to appoint new counsel to
24 address the issue of repatriation so the Court may make a
25 determination about eligibility for appointment under the CJA.

1 And at the end of the paragraph you repeat it, that new counsel
2 should be appointed to address the issue, the issue being a
3 thorough accounting of the funds subject to the repatriation
4 order.

5 Okay. So let me just sort of set the stage. I
6 think I have a better understanding now maybe where you're
7 coming from and I just need to kind of lay it on the table.

8 We did have prior counsel. There's been a number of
9 counsel in the case. But counsel that served after trial but
10 before present counsel was Attorney Strauss and he -- he made a
11 filing where he withdrew certain representations made about the
12 repatriation issue and -- and sought to withdraw it, which was
13 granted.

14 And I guess I just need to ask you, Attorney Brown,
15 are you in a position where -- where even if -- where if you
16 were appointed as CJA counsel, as you had requested, if you
17 were proceeding under CJA for your compensation but the Court
18 wanted to pursue the repatriation issue and litigate it, would
19 you be in a position -- would you have ethical challenges to
20 being able to continue? Would there be barriers to that? Is
21 that what you're trying to tell me in this sort of -- the same
22 message that Attorney Strauss filed on? Is that what you're
23 telling me or am I misinterpreting.

24 You're muted. You're muted.

25 MS. BROWN: I had my button -- I was muted. I

1 wanted to answer that a hundred percent no.

2 THE COURT: Okay.

3 MS. BROWN: That is not anywhere close to that. I
4 think what the ethical issues are is that -- because I -- I'm
5 trying to -- I don't have all the motions pulled up to open
6 them, but I do remember one of the -- I don't know if it was an
7 order or pleading from the government of like, well, you can go
8 file a lien or you can do all that and I do not feel
9 comfortable, and my firm does not feel comfortable, pursuing
10 Mr. Alrai in civil court at the same time I'm representing him.
11 And, you know, so that -- that was the issue. And -- and so --
12 but it has nothing to do with any false statements that I
13 believe that he's made regarding repatriation.

14 And, again, if we're laying all our cards on the
15 table, I will do that regarding repatriation. You know, there
16 were a bunch of things when I went through that were stacking
17 on frustration: The denial of the motion to appoint, just the
18 objection by the government -- I mean, that -- that was the
19 ultimate hubris of them delaying the Brady -- you know,
20 litigating Brady for a year and a half till my client ran out
21 of access to funds and then say, oh, you don't get a lawyer
22 now.

23 So that frustration was there. The frustration of
24 the denial of the extension, and -- and the big one was like,
25 oh, my -- you know, literally I said this in my brain, not the

1 repatriation again. You know, this is the third time. And it
2 -- and it's just so frustrating to me because it keeps getting
3 put up when the government's back on the heels of something.

4 So it was brought up -- because I remember at the
5 very first hearing I was at, they were bringing it -- the
6 government was bringing it up, that we've got to deal with this
7 right away, and I said, well, it hasn't been dealt with since
8 November, why is it a big emergency, can't I get up to speed on
9 the case before I have to address repatriation. And the -- and
10 the big urgency then was that, you know, he might leave the
11 country. Of course, that was a spurious argument.

12 So then when I file a motion to get appointed at --
13 knowing that we will, you know, our firm will lose money on
14 getting appointed because that's not what we contracted with,
15 but I was willing to do that, then they bring up repatriation
16 again. So I'm very frustrated by repatriation. So -- so this
17 has nothing to do with my knowledge of any false statements
18 regarding repatriation.

19 THE COURT: Okay.

20 MS. BROWN: I want to make that a hundred percent
21 clear.

22 THE COURT: Yeah.

23 MS. BROWN: This has to do with not wanting to be a
24 civil litigant against Mr. Alrai at the same time that I am,
25 you know, litigating his case in --

1 THE COURT: Yeah.

2 MS. BROWN: -- in federal court.

3 I also think, too, as you know, I've -- I do a fair
4 amount of ineffective assistance of counsel claims and I've
5 done -- I've done a couple in federal court. I do more in
6 state court. And as someone who litigates ineffective
7 assistance of counsel claims, one of the first things I'm going
8 to look at is money. You know, I had a case a couple years ago
9 where someone paid their trial counsel \$5,000 for a
10 week-and-a-half aggravated felonious sexual assault.

11 THE COURT: Yeah.

12 MS. BROWN: I'm like, okay, that's -- and then they
13 didn't do any investigation, didn't do any trial prep, didn't
14 write an opening argument. I'm like, yeah, for \$5,000, you're
15 not going to get those things.

16 And so not getting paid, you know, obviously there's
17 the financial loss to my firm and myself and Attorney Eaton,
18 but it also creates potential issues down the road for
19 ineffectiveness of, you know -- and I have no reason that
20 Mr. -- reason to believe Mr. Alrai would do this, but, you
21 know, successor counsel may say, hey, they were working for how
22 many months without money? Let's go look and see what they
23 decided not to do. So that -- that is the risk that --

24 THE COURT: Yeah. Okay.

25 MS. BROWN: -- that's based on. It has nothing to

1 do with repatriation.

2 THE COURT: Understood. I -- and by the way, in
3 terms of false statements -- you know, I don't even know if
4 false statements had anything to do with Attorney Strauss'
5 withdrawal, prior counsel. I wasn't going to false statements.
6 I just was wondering if -- I was wondering if you were just
7 trying to discretely tell me you had a similar problem and you
8 needed to withdraw, but --

9 MS. BROWN: No, that's not the case.

10 THE COURT: -- you've answered that. Thank you.

11 MS. BROWN: Yes.

12 THE COURT: I was hoping to just get my questions
13 answered today, but you've said a couple of things that the
14 government's probably going to want to respond to, so I need to
15 give them an opportunity to do that just on this one small
16 question. But I want to say a couple things about it.

17 I've already explained, yeah, false statements is
18 not in my mind. It's just, you know, that's one of any number
19 of things that could cause counsel to want to withdraw as
20 Attorney Strauss did. But, again, you've addressed it.

21 Number two, I don't -- I don't want to suggest to
22 you that repatriation -- I mean, repatriation is my issue.
23 Like the fact that the government raised it -- frankly, I
24 didn't even remember that the government raised it. It's --
25 it's my issue because I'm trying to evaluate someone's

1 eligibility for CJA counsel. It's really nothing more
2 complicated than that. And I don't think it's a small issue in
3 the case. I think it's a large issue in the case because
4 there's a court order -- there's a court order that hasn't been
5 complied with to -- in my view.

6 But, you know, if the choice is losing very
7 competent counsel over it, it might be something I'm willing to
8 back-burner and maybe take another look at CJA appointment.
9 And I just -- so I don't view repatriation as sort of the
10 government's issue. I guess it is important to them and I
11 guess they briefed it, but it is important to the Court. It's
12 not just something I -- I view it as -- to evaluate a request
13 for CJA counsel, it's something I needed to do the Court's due
14 diligence on. That's why I -- that's why I cited --

15 MS. BROWN: Can I address that, your Honor? What's
16 frustrating, though, is it never gets brought up in its own
17 right. No one ever -- like if the government said, motion to
18 have Mr. Alrai found in contempt for failing to comply with
19 repatriation --

20 THE COURT: I think they've done that. I actually
21 think they've done that earlier in this case, to tell you the
22 truth. I don't view it as just a reaction. I mean, I hear
23 your point. You're saying frustrating to hear it brought up as
24 a kind of a judo defensive move --

25 MS. BROWN: Right.

1 THE COURT: -- but --

2 MS. BROWN: It's always brought up with something
3 else.

4 THE COURT: Okay.

5 MS. BROWN: It's always -- it's either bail or now
6 it's appointment of counsel. And it hasn't been litigated.

7 And then, you know, as I said they --

8 THE COURT: How's it -- but, see, here's the thing.
9 How's it going to be litigated? I haven't examined the docket
10 on this and perhaps, you know, your perception is correct. I
11 don't know. But, to me, the repatriation issue is an issue
12 that's been steadily advanced by the government throughout this
13 litigation in a consistent way, not in a way that I've at least
14 noticed has been sort of a defensive counterpunch whenever
15 there's something raised by the defense. It seems to me
16 that -- and I think they did request a contempt finding
17 sometime in the case, although I'm not sure. It's been a long
18 case. Let's face it.

19 Anyway, let me let the government respond to the
20 extent it needs to before I move on because I do want to
21 explore the issue of this motion to withdraw.

22 But I want -- whoever's speaking for the government,
23 you can respond to anything that you've heard that you want to
24 say anything about.

25 MS. LE: Your Honor, my only comment is it's been

1 almost a year and a half since we filed a motion for a show
2 cause hearing related to the repatriation issue and I think the
3 Court is right on target about all the other times. We've
4 addressed it; we addressed the issue of repatriation before
5 trial, twice; we addressed it after trial not only with
6 Ms. Brown and Mr. Eaton, with Mr. Strauss and his firm as well.

7 This is an ongoing issue that is important to the
8 government and to the Court for lots of reasons. The defendant
9 has been released. Part of the Court's release order was
10 dependent on or at least based in part on the idea that the
11 Court would be able to gain some kind of more thorough
12 accounting with the defendant out on release. That hasn't
13 happened.

14 And then what the Court just identified now is
15 whether the defendant has the means, including the million
16 dollars that we've identified that was sent to Pakistan, in
17 order to pay counsel. And certainly that is part of the
18 Court's due diligence, which is the thing that the government
19 brought up in its response.

20 We don't object -- if the defendant really is out of
21 funds and the Court is in a position to appoint Ms. Brown as
22 CJA counsel, we don't object to that, your Honor. But the
23 Court, as you said, has to do its due diligence. We don't know
24 what happened to that million dollars to this day. It's been
25 well over two years since the Court's order regarding

1 repatriation.

2 So that is the only point the government wishes to
3 address regarding counsel's statements on this issue.

4 THE COURT: Yeah. Okay. Let's move on to other
5 issues then.

6 Let me ask this -- let me ask you this question,
7 Attorney Brown. You made the point in your motion that the
8 contentiousness of the litigation concerns you regarding the
9 effectiveness of your representation.

10 Is that something -- I mean, if you were -- if you
11 were appointed CJA counsel, because I'm not going to -- I'm not
12 going to require you to stay in the case as retained counsel
13 for -- for no compensation. That's just not something I would
14 do. There are times that I would do that, if I thought -- if I
15 thought an attorney was trying to ditch a client or a case, but
16 I don't -- that's not the case here at all. I don't have any
17 reservation that that's not something you would ever do and not
18 what -- would not do in this case.

19 But you have raised this idea and I think I need to
20 deal with it if there's any chance of keeping you in the case
21 here. Can you talk about that? Are you -- are you concerned
22 that if you stayed with the case, the fact that you have
23 made -- you've reported one of your adverse counsel to
24 disciplinary authorities would in some way poison the
25 environment enough that would -- that would prevent you from

1 providing effective assistance?

2 MS. BROWN: Your Honor, when I wrote this motion,
3 and I wrote this motion with the assistance of other counsel --

4 THE COURT: Yeah.

5 MS. BROWN: -- in my firm, I would describe what --
6 and it is a very difficult decision. I love working for Imran.
7 I think he's a great client. I would miss not working for him.
8 And so this was not an easy decision.

9 THE COURT: Yeah.

10 MS. BROWN: But what happened was this perfect storm
11 of like -- kind of like I just can't take this anymore. Like,
12 you know, I'm getting personal insults from -- you know, in
13 pleadings of just being dismissive. I'll throw the
14 repatriation in there. I just looked it up. The order -- the
15 motion that the State moved about was a year ago, September of
16 '20. I was like, okay, we're doing the repatriation again.

17 And then it was -- it was then it was like, okay,
18 and I'm not going to get paid, and I'm not going to have any
19 way to recoup the extremely large debt -- which I haven't
20 shared that with the government, but you know that because I've
21 submitted our billings. And so that was a part of it.

22 I mean, I will say getting ready for this hearing, I
23 was like -- like, oh, God, you know, it's just kind of this
24 stress level --

25 THE COURT: Yeah.

1 MS. BROWN: -- that just comes on --

2 THE COURT: I'm sorry. You want to take a little --

3 MS. BROWN: No, I'm fine. I'm fine.

4 THE COURT: Okay.

5 MS. BROWN: But it -- I can take anything when
6 someone apologizes. They haven't apologized for anything.
7 They haven't apologized for wasting this Court's year and a
8 half of litigating Brady when they knew no longer -- no later
9 than August of 2020 they'd committed a Brady violation. They
10 wasted my client's money, then they have the whatever to then
11 argue that he shouldn't get counsel after they've expended all
12 his money.

13 So it was; it was this perfect storm of them
14 objecting to us being appointed after having did -- doing
15 frivolous litigation for six months, not apologizing for any of
16 the insults that they lodged against us -- I mean, this is what
17 we're dealing with here, your Honor. So it was part of it.
18 It's like, okay, I'm going to do this and not get paid for it
19 and go into debt and be treated like this.

20 THE COURT: Well, let me ask you this. I mean, I
21 also -- I -- I don't think it's the government's position that
22 they knowingly committed a Brady violation. I don't think
23 that's ever been their position. And I know you disagree. I
24 do.

25 MS. BROWN: Yes, very much so.

1 THE COURT: I know you disagree. But I have to -- I
2 have to ask you this, though. See, you can see my trying to
3 keep you in the case here. Okay? You can see it.

4 MS. BROWN: I can see that.

5 THE COURT: But what I'm -- but what I don't want to
6 deal with, and I just need to be up front about it, is I don't
7 want to deal with a situation where you withdraw this motion or
8 I end up granting the CJA motion pretty much because I'm kind
9 of in a corner, okay, and I'm dealing with later you on the
10 witness stand saying, well, things were so contentious that I
11 couldn't provide effective assistance and I put that right in
12 my motion. I -- I don't want to be dealing with that.

13 And so I'm asking you straight up. Are you -- are
14 you telling me that it's got -- it's just reached the point of
15 no return, where you're -- you don't think you can provide
16 effective assistance based on the -- you know, what you
17 describe as sort of a poisoned relationship between counsel?

18 A straight answer is fine. I -- I'm not trying to
19 put you in a corner here. I just want to -- I want to run the
20 case in a way that -- that honors the defendant's rights --

21 MS. BROWN: Right.

22 THE COURT: -- and the professionals -- the
23 professionals' right to practice law in the way they want to.

24 MS. BROWN: I mean, you know me. If I'm -- if -- if
25 I remain in the case, I'm going after them just as hard next

1 year as I did last year. That's just kind of how it's going to
2 go.

3 I -- I think what's difficult now -- you know, I
4 spent this week -- we picked two juries last week. One of them
5 is supposed to start Monday.

6 THE COURT: Yeah.

7 MS. BROWN: We showed up on Monday, we lost three
8 jurors. The judge had to declare a mistrial.

9 THE COURT: Yeah.

10 MS. BROWN: That guy was in jail. His trial's now
11 moved to January. I had to call three other clients who were
12 going to get their trials in January to tell them their trials
13 were now bumped out to June because this guy was in jail. I
14 mean, that's -- dealing with all that and, you know, so --

15 THE COURT: Okay.

16 MS. BROWN: I mean, there's a part of me that really
17 wants to stay on this case. As I said, I -- you know, I'd like
18 to finish it through. But dealing with -- I don't expect it to
19 get better. I don't expect an apology. And even if they
20 did -- and I know -- you're right, I don't buy it, that this
21 was a mistake -- but even if it was, that's something to
22 apologize for and they haven't even done that.

23 They haven't done it to you. That's what frustrates
24 me. They haven't said, your Honor, we're sorry; we wasted ten
25 days of your life, we've wasted this Court's time. They

1 haven't given -- they have given no apologies whatsoever and
2 any concession has been pulled out like teeth from them.

3 THE COURT: All right. Well, that --

4 MS. BROWN: I mean, that's -- that's what we're
5 dealing with here --

6 THE COURT: Yup.

7 MS. BROWN: -- and I don't see that getting better.

8 If -- if this was a case where we had a prosecutor
9 who said, you know, I made a mistake, you guys are entitled to
10 a new trial -- and I've read those cases; I think I've read
11 every Brady case in the country at this point --

12 THE COURT: Yeah.

13 MS. BROWN: -- and I've seen those cases. If we had
14 that case and I felt that we could go forward in good faith and
15 that I would be dealing with prosecutors -- like I still -- you
16 know -- and I don't know if this is because of the history or
17 whatever, I don't trust them. I just don't trust them. And
18 we're going to have to deal with that, too; that, you know --

19 THE COURT: Okay. Okay. Look.

20 MS. BROWN: It's not -- it's not in a good place.
21 And that's because of them, not me, but I -- I'm just
22 frustrated that they haven't been held to account.

23 THE COURT: Okay. I -- while I don't want to -- I
24 don't want to restrict your -- I don't want to restrict your
25 presentation today at all, Attorney Brown, and I don't want to

1 step on anything you want to say, I -- I -- I don't -- I just
2 don't expect counsel to be apologizing to the Court for -- for
3 conduct that I believe -- that -- well, not so much that I
4 believe, but that they don't believe they undertook in bad
5 faith.

6 That's just -- you know, it would take a lot for me
7 to think that someone should apologize to me. That's not for a
8 second, okay, critiquing or criticizing your -- your good faith
9 belief that you're entitled to an apology. I don't mean to
10 undermine that for a minute. But it's not something I expect.
11 I do expect it under some circumstances, but it's normally when
12 I know -- I know, because I'm watching counsel -- that they are
13 conducting themselves in bad faith, and I don't have that
14 feeling about this litigation. I -- you know, I've made known,
15 I think, that it was a Brady violation and one that caused
16 prejudice, for sure, that's why we're having another trial.

17 But I think -- I think I understand your position
18 now, and I think I'd be remiss at this point, frankly, to
19 not -- to not grant your motion.

20 I was -- you know, I was very prepared to reschedule
21 things because, again, I didn't realize what you were dealing
22 with in state court. Maybe I should have. I just didn't.
23 Because I was talking to Nayha about it, my law clerk who's
24 working with me on the case, and I thought -- and we both said,
25 geez, that's a lot to deal with at the same time as our trial

1 and it's just not realistic. Had I known that, I think I would
2 have been much more open to extending things, and I am right
3 now, but what you're describing to me, I think, is probably --
4 the better course is to -- is to allow you to withdraw.

5 And you've done some good work for this defendant,
6 by the way. You've done some good work for this defendant and
7 it's also going to be terribly inefficient --

8 MS. BROWN: If it makes you feel any better, I
9 wouldn't have been ready to try this case until next September
10 when I really sat down and looked at my schedule and what I
11 have.

12 THE COURT: Yeah.

13 MS. BROWN: So that was part of the analysis, too,
14 was that --

15 THE COURT: Talk to me a little bit about your -- I
16 think it was something like -- it was six -- it was eight cases
17 in a few months and they were -- I mean, what's the state of
18 that now, if you can summarize?

19 MS. BROWN: It's not getting -- as I said, it's got
20 worse since I filed the motion because, you know, once -- so
21 basically what the courts are doing is I -- I analogized it to
22 overbooking an airline.

23 THE COURT: I saw what they're doing, yeah, stacking
24 it up.

25 MS. BROWN: Yeah, overbooking knowing something will

1 settle, something will plea.

2 So I have a client that's actually coming up for
3 jury selection on Monday after Thanksgiving. I've read three
4 separate groups of jury questionnaires, which he had to pay for
5 because he's -- I'm billing him hourly. So he's had me read
6 jury questionnaires; he's had me subpoena witnesses, I have
7 out-of-state witnesses. I've done that three times. I've
8 about three or four cases like that this year where I've had to
9 prepare them for trial repeatedly and I think that is still the
10 case.

11 Hillsborough North is the worst. You get a list of
12 40 cases scheduled for four slots of juries and you have to --
13 they tell you, you've got to be prepared and you've got to send
14 out subpoenas and you've got to spend your client's money even
15 though it might all be wasted because you don't get to go to
16 trial.

17 And so that -- I would -- everything I have right
18 now is scheduled out through June.

19 THE COURT: It's not -- the bottom line, it's not
20 better; it's worse.

21 MS. BROWN: Oh, yeah. Yeah. Definitely.

22 THE COURT: Okay.

23 MS. BROWN: It's not better, that's for sure.

24 THE COURT: Okay. Well, okay. Let me hear from the
25 government. I -- you know, you've heard what I've -- I've sort

1 of reached the conclusion, I think, here that -- I know you
2 took no position on the motion to withdraw. I think it said --
3 the motion said, yeah, AUSA Cam Le takes no position, but is
4 there anything you want to say about the motion to withdraw
5 before I move ahead?

6 MS. LE: Nothing on the motion to withdraw, your
7 Honor.

8 We do have a suggestion or a compromise of sorts
9 related to the CJA appointment if and when you want to hear
10 that, your Honor.

11 THE COURT: Well, does it involve -- does it involve
12 Attorney Brown?

13 MS. LE: No, your Honor.

14 THE COURT: No, I don't want to prolong it then.
15 Yeah.

16 MS. LE: Okay.

17 THE COURT: But I appreciate that.

18 Actually, I guess I'll hear it, only because I don't
19 know how else I'm going to hear it --

20 MS. LE: Right.

21 THE COURT: -- because we need to have counsel
22 present and Attorney Brown's present.

23 So go ahead. What's the suggestion?

24 MS. LE: Your Honor, you know, obviously Mr. Strauss
25 was working with the defendant previously to address the

1 repatriation issue. Ms. Brown filed a pleading which the
2 government, as you know, doesn't think that that resolves the
3 repatriation issue. Without having that accounting, it's hard
4 for the Court to assess his ability to pay.

5 We propose that the Court tentatively appoint or
6 grant in part that the appointment with a -- kind of status
7 conference or a deadline to allow the new attorney to get up to
8 date to help his client or her client address the repatriation
9 order. That way the Court can be satisfied that it's done its
10 due diligence and so then that the Court's -- the taxpayer
11 money is applied appropriately.

12 THE COURT: Okay.

13 MS. LE: If for some reason the Court learns through
14 the -- the repatriation accounting that there are funds
15 available, then we can revisit the issue, your Honor.

16 THE COURT: I -- I understand.

17 MR. DAVIS: That's a compromise.

18 THE COURT: It's a perfectly good suggestion. Of
19 course, I -- I think it -- look. Attorney Brown's been willing
20 to address every issue. I think if she was in a position to
21 address that issue --

22 I assume you're not just so frustrated over
23 repatriation, Attorney Brown, that you're not engaging it;
24 you'd address it if you could and I don't think -- I think it's
25 been addressed to the extent it can be addressed. I don't have

1 a lot of confidence that even if I appoint interim CJA to
2 address it I'm going to make any real progress.

3 On the other hand, if I allow Attorney Brown to
4 withdraw, and I think I have to at this point based on what
5 she's said here today and what she's filed here in her motion,
6 what am I going to do? I mean, he needs counsel to go to
7 trial. I mean, I can't -- I can't let him go to trial -- he
8 doesn't want to go to trial *pro se*, and I wouldn't do that.

9 So I appreciate the suggestion. I do. A very
10 difficult situation.

11 Okay. Just give me a moment here. I just want to
12 check my notes to see if there's anything else I wanted to ask
13 Attorney Brown about before I -- while I still have access to
14 her about this case.

15 MS. BROWN: And I will just add, to the extent I
16 haven't withdrawn, well, I think I still have duties towards
17 Mr. Alrai --

18 THE COURT: Oh, yeah.

19 MS. BROWN: I agree with the Court's assessment that
20 leaving him unrepresented for a period of time while the
21 repatriation -- I think that -- with the posture of this case,
22 that's just -- that's a recipe for disaster.

23 THE COURT: I don't think that was a suggestion.
24 The suggestion was I appoint CJA counsel, sort of a -- as
25 interim to address this issue in particular. And it's

1 something I'll think about, I just don't have a lot of
2 confidence we're going to make real progress. You know, I
3 think if there was information forthcoming about the money in
4 Pakistan, I think it would be in the Court's possession by now,
5 but I could be wrong.

6 I will consider it, Ms. Le, I really will, as a way
7 of approaching this.

8 Okay. Let me ask this question. Before I proceed,
9 Attorney Brown, this might help me get -- make some progress
10 here.

11 I'm sure you've been -- you know, you've had your
12 eyeballs on this file now for a long time and you've litigated
13 hard. Do you have questions -- I want you to answer freely.

14 Do you have questions about prior counsel, like --
15 in other words, this case was tried to a -- to a -- to a bench.
16 Are you critical of prior counsel's performance in a way that
17 you think ineffective assistance was provided?

18 MS. BROWN: I actually filed a motion to that
19 effect.

20 THE COURT: Oh.

21 MS. BROWN: It's never been ruled on because it was
22 mooted out by the --

23 THE COURT: Okay.

24 MS. BROWN: -- motion. Yeah, so we -- and, in fact,
25 it was very much related to Naviloff. I mean, I think what we

1 argued is that there were smoke signals during the trial that
2 they hadn't got everything from Naviloff and that the
3 government's representations had -- about having everything,
4 there was definitely some issues with that in the middle of
5 trial.

6 If I had been trial counsel, and I think this is
7 what our motion -- I would have said, wait a minute, who's
8 this --

9 THE COURT: I remember now.

10 MS. BROWN: -- Ryan guy? You know, where did he
11 come from? We were asking if you'd consulted with anyone, and
12 you said no.

13 THE COURT: I remember now.

14 MS. BROWN: Yeah. That was all in the file. So the
15 short answer to your question is yes as to trial counsel.

16 THE COURT: I'm on -- you know, I'm obviously on
17 tentative ground here and thin ice, but I want to ask you then.
18 Do you have a view, do you have a view -- I'm putting you on
19 the spot here, but do you have a view that armed with the
20 information now that you've been able to accumulate with a new
21 trial coming that trial counsel would be in a position to cure
22 that and, you know, because I viewed him as competent -- a
23 competent defense lawyer, and still do, despite some misgivings
24 you've expressed and I know what you're saying.

25 But with the information now that's been

1 forthcoming, do you think he'd be in a position to provide
2 effective assistance of counsel? Do you have an opinion about
3 it?

4 MS. BROWN: Well, first of all, to the extent you
5 don't think I'm being candid, I thought I was being very candid
6 during this hearing today.

7 THE COURT: Yeah, I do. I do.

8 MS. BROWN: But I -- I do. If I were Mr. Alrai, I
9 would not want to be represented by someone who I --

10 THE COURT: Yeah.

11 MS. BROWN: -- who your in-between lawyer said this
12 person made mistakes. So, now, you're -- like I would --
13 because I won't --

14 THE COURT: That's reasonable.

15 MS. BROWN: Yeah. I've pointed out other things I
16 would have done. I mean, perfect example is the bench trial.
17 No offense, not a big fan of bench trials. I -- I think, you
18 know, just better to have 12 people than one. Just the math
19 works out for defendants usually on that one.

20 THE COURT: Okay. No offense taken.

21 MS. BROWN: Yeah. So there's other things that I
22 have pointed out to Mr. Alrai that I would -- would have done
23 differently at trial. So I think that is problematic.

24 And I think we filed -- actually, did we file more
25 than one motion in -- for ineffective --

1 THE COURT: Yeah, there was a lot filed.

2 MS. BROWN: Yeah, I know there was a lot filed.

3 There's at least one ineffective motion against Attorney
4 Harrington and his cocounsel.

5 THE COURT: Okay. All right. Thanks, everybody.

6 THE DEFENDANT: Your Honor, this is the defendant.

7 THE COURT: Whoa, whoa. Time out. Time out. I
8 think before you say anything to me you should probably consult
9 with Attorney Brown and Attorney Eaton just briefly in a
10 breakout room.

11 THE DEFENDANT: Yes.

12 THE COURT: I assume that's what you want,
13 Ms. Brown?

14 THE DEFENDANT: Yes.

15 MS. BROWN: Yes. That's fine. Thank you, your
16 Honor.

17 THE COURT: Can you arrange that, please, Kellie.
18 There should be something coming up on your screen.

19 MS. BROWN: Yes.

20 (Defendant and counsel conferred in a breakout room.)

21 (Off-the-record discussion.)

22 MS. BROWN: Sorry to take so long, your Honor, but
23 we were just finishing up when I saw that message, so we're all
24 set.

25 THE COURT: That's okay. I don't want your counsel

1 to address me unless it's okay with you -- your client.

2 MS. BROWN: Yeah. I think, Imran, you're good with
3 not speaking to the judge, right?

4 THE DEFENDANT: I am. Thank you.

5 MS. BROWN: Okay. Thank you.

6 THE COURT: All right. I guess I just want to cover
7 one more issue then before we wrap up here, before ruling.

8 I guess I do need to ask you one question, Attorney
9 Brown, and it's not about the withdrawal, it's just more about
10 the -- the situation with the repatriation.

11 Because, you know, now that you're telling me that
12 your -- your withdrawal isn't based on any sort of ethical
13 quandary, which I accept and respect, the fact is you didn't
14 address it in your response. And I guess if it's not an
15 ethical issue, I'm wondering, is it just because -- I mean, you
16 have described the fact that you don't think it's a legitimate
17 issue to be raised at this point. Is that why you haven't
18 addressed it? Because I'm not sure why it's not a legitimate
19 issue to be raised. It's -- I mean, there's a court order and
20 it's part of the case.

21 MS. BROWN: Right. And Mr. Alrai has repeatedly
22 filed pleadings saying he's complied with it. So there's
23 nothing -- you can't prove a negative, you know, and that's
24 what the government is trying to do is they're trying to argue
25 that he hasn't complied with it, but they have no proof that he

1 hasn't complied with it. He said he's complied with it. I
2 just don't know where else to --

3 THE COURT: Oh, well, let me be clear about that.
4 He has not complied with it. That's not even remotely true.
5 He's not complied with it. I mean, there at least should be
6 answers to questions about -- you know, about what specific
7 accounts the money was deposited to and what information -- so
8 at least somebody could take a look at this. I mean, the -- so
9 I understand he's said he's complied with it and your position
10 is that and --

11 MS. BROWN: Well, is there a -- an order from this
12 Court finding that he hasn't complied with it? I -- I am not
13 aware of one.

14 THE COURT: Probably. Well, I mean, certainly my --
15 certainly my order that I can't grant you CJA status -- I know
16 you don't want it anymore, I get it -- unless I -- unless I
17 have information is at least implicitly a ruling, but -- that
18 he hasn't complied with it, but you might be right; there might
19 not be a -- I certainly haven't held him in contempt or -- go
20 ahead, Ms. Le.

21 MS. LE: Your Honor, the Court did exactly spell
22 when the Court's expectations were regarding repatriation.

23 THE COURT: Yeah. I mean, clearly I don't view it
24 as complied with but, it might be that you're right, Attorney
25 Brown, that I didn't, you know, issue an order saying --

1 MS. BROWN: You didn't.

2 THE COURT: -- there's been a lack of compliance or
3 a failure to comply. I guess I'm going to make that clear.

4 MS. BROWN: As I said before, I think that a motion
5 for appointment of counsel was the best vehicle for litigating
6 that. And as I said before, the last pleading on the
7 repatriation was over a year ago and the government filed no
8 motion for a hearing, no motion for status or anything.

9 So I -- I'm standing by my -- my belief that this --

10 THE COURT: Yeah.

11 MS. BROWN: -- was totally raised a tad after we
12 filed the motion for appointment.

13 THE COURT: Well, you can take them to task for
14 raising it, but understand that it -- my focus on it had
15 nothing to do with their raising it. And I will say that -- I
16 will say that the -- the prosecutors have repeatedly expressed
17 frustration with me for not doing more about it. I can tell
18 you that. They have reminded me many times that this should be
19 dealt with.

20 You had your hand up, Attorney Le.

21 MS. LE: We raised it and it still has not been
22 addressed in the show cause for why he should not be held in
23 contempt, your Honor, just to make the record clear.

24 THE COURT: Document 163. I saw that. Yeah. Okay.

25 MS. BROWN: I agree with that.

1 THE COURT: Regardless, okay.

2 Thank you, everybody. I will -- I'll get a ruling
3 out on this shortly.

4 MS. BROWN: Okay.

5 THE COURT: Have a good weekend. Thank you.

6 MS. BROWN: Thank you.

7 MR. HUNTER: Thank you, your Honor.

8 (Proceedings concluded at 3:24 p.m.)
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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate transcription
of the within proceedings, to the best of my knowledge, skill,
ability and belief.

Submitted: 12/30/2021

/s/ Liza W. Dubois
LIZA W. DUBOIS, RMR, CRR